

(2019) 09 AFT CK 0002

In the Armed Forces Tribunal

Case No : Original Application No. 888 Of 2018, Miscellaneous Application No. 743 Of 2018

Balbir Singh Khandewal

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 16-09-2019

Acts Referred:

Citation : (2019) 09 AFT CK 0002

Hon'ble Judges : Sunita Gupta, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : Praveen Kumar, S.R. Swain

Final Decision : Allowed

Judgement

MA 743/2018

1. By way of the instant application, the applicant seeks condonation of delay of 448 days in filing the present O.A. In view of the law laid down by

the Hon'ble Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh (2009) (1) AISLJ 371, delay in filing the OA is condoned. MA

is allowed accordingly.

OA 888/2018

The claim of the applicant in the present OA is limited to the following reliefs:

a) Quash and set aside the impugned letters dated 06 Feb 2018.

b) Direct respondents to grant disability pension @50% after rounding off the same from @ 15-19% for life as recommended by RIVIB to the

applicant with effect from 17 Aug 2006, i.e., the date of discharge from service with interest @ 12% p.a. till final payment is made.

c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.

2. Through the medium of instant OA the applicant has put challenge to Letter No.Air HQ/99798/1/710335/DAV/DP/CC dated 6th February, 2018

denying him disability pension.

3. The facts germane to the filing of present OA are that the applicant was enrolled in the Air Force on 2nd February, 1987 and released from service

on 16th August, 2006, at his own request after rendering more than nineteen years of service. At the time of release, he was brought before duly

constituted Release Medical Board, which viewed his disability, i.e., ID Temporal Arachnoid Cyst (LT) for life at the rate of 15-19% and the applicant

was released in low medical category A4G4(P). However, the applicant was not granted Disability Element of Pension because the disability was not

found to be attributable to nor aggravated by service and was less than twenty per cent. Thereupon, the applicant filed the present OA claiming

Disability Element of Pension along with interest at the rate of twelve per cent per annum.

4. According to the applicant, the relief sought by him in the instant matter is squarely covered by a catena of judgments of the Honlle Supreme Court

including Dharamvir Singh Vs. Union of India (2013) 7 SCC 316, Union of India Vs. C.handerpal, Union of India Vs. Rajvir Singh (2015) 12 SCC 26,4

Union of India Vs. An,gad Singh Titaria (2015) 12 SCC 257 ,Union of India Vs. Manjeet Singh (2015) 12 SCC 27,5 Ex Hav Maniram Bharia V.

Union of India, Satwinder Singh Vs. Union of India,E x Gnr Laxinanram Poonia Vs. Union of India (2017) 4 SCC 69 7According to the applicant, his

claim for disability pension is also supported by the applicable rules.

5. On the other hand, learned counsel for the respondents has contended that the claim of disability ID Temporal Arachnoid Cyst (LT) at the rate of

15-19% for life put-forth by the applicant has been found to be 'Neither Attributable to Nor Aggravated by Military Service by the Medical Board and

further that the percentage is less than twenty per cent, hence, he is not entitled to disability pension for the above disability. It is further contended

that the opinion of the Medical Board, being an expert body, must be respected.

6. We have considered the submissions advanced by learned counsel for both the parties perused the records. In the light of rival submission, the twin

questions before us are as to whether the disability of the applicant is attributable to or aggravated by military service and also whether the applicant is eligible for grant of disability element of pension though his degree of disability is assessed as less than 20% (15-19%).

7. In this connection, we have noted that the disability of the applicant i.e. 'TEMPORAL ARACHNOID CYST-(Lt)'" has been recorded as constitutional in nature"" and hence not connected with service. We have also noted that this disability started in the applicant in the year 2004. On the other hand, we find that Ld counsel for the applicant has furnished evidence of injury to applicant in terms of injury report wherein on 14th July, 1989, the applicant while playing hockey inside the Air Force camp was hit by a hockey stick on the right side of his cheek at about 1700 hrs. In this connection, the officiating Station Cdr Wg Cdr P Jaganathan has also given a certificate in terms of para 796 (c) (ii) of Regulations for the Air Force .revised edition 1964. We have further noted that as per available medical reference, whereas primary arachnoid cysts are congenital in nature, secondary arachnoid cysts develop as a result of head injury, meningitis or tumor or as a result of complication of brain surgery. Typical symptoms of this disability can cause headache, nausea, vomiting, seizures, having visual disturbances, vertigo etc. Thus, it is very clear that besides other causes, head injury can cause this disability, i.e., Temporal Arachnoid Cyst (Lt).

8. In the above back drop, we are clear that there is official evidence at hand that injury to the applicant occurred on 14th July, 1989 at about 1700 hrs when he was hit on his cheek by a hockey stick while playing games. We are also clear that Physical Training OM and Games are a mandatory requirement for all personnel of the armed forces in the evening hours. Hence this incident of injury inside the Air Force camp and while playing hockey has taken place in organized games. Therefore, considering all issues and evidence available on the subject, we would like to give benefit of doubt to the applicant and his disability ""Temporal Arachnoid Cyst (LT) is to be considered as attributable to military service in light of the well settled law by Honble Supreme Court in the case of including Dharamvir Singh Vs. Union of India and Ors. (2013) 7 SCC 316.

9. The next question which comes for consideration is the percentage of disability. In the instant case, the applicant has a disability of 15-19%.

However, considering all issues, we are of the considered opinion that there is a very marginal but significant difference between 15-19% and 20%

disability. While 20% ensures entitlement to disability pension, 15-19% does not. Thus it appears that the degree of disablement has been restricted to

15-19% purely with a view to deny disability pension to the applicant. Thus we are inclined to consider the degree of disability @ 20%. In this case,

the law has again been settled by the Hon'ble Supreme Court in Union of India and Ors. Vs. Ram Avtar decided on 10th December, 2014, vide which

the Hon'ble Apex Court has frowned on granting the benefit of rounding off only to those who are invalided out and not extending the same to other

category of retirees. Relevant extract is as follows:-

4. By the present set of appeals the appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of

superannuation or on completion of his tenure of engagement, if found to be suffering from some climb:1107 which is attributable to or

aggravated by the military service, is entitled to he granted the benefit of rounding-off of disability pension. The appellant(s) herein would

contend that, on the basis of Circular No. 1(2)/97/D (Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the

aforsaid benefit is made available only to an Armed Forces Personnel who is in out of service, and not to any other category of Armed

Forces Personnel mentioned hereinabove.

5. We have heard learned counsel for the parties to Hs.

6. We do not see any error in the impugned judgment(s) and order(s) and therefore all the appeals which pertain to the concept of

roundingâ?"off of the disability pension are dismissed, with no order as to costs.

7. The dismissal of these matters will be taken note of by the High Courts as well as the Tribunals in granting appropriate relief to the

pensioners before them, if any, who are getting or are entitled to the disability pension.

However, the applicant has approached this Tribunal after considerable delay. Hence, as per settled law on this matter by the Hon'ble Supreme Court

in the case of Union of India and Ors. Vs. Tarsem Singh reported in 2009 (1) AISLJ 37 1his financial benefits will be restricted to three years before

filing of this OA.

10. In view of the aforesaid judicial pronouncements, the parameters referred above and further taking into account all the circumstances, we hold

that the applicant is entitled to Disability Element of Pension. Therefore, OA is allowed and the applicant's disability, i.e., ID Temporal Arachnoid Cyst

(LT) at the rate of 15-19% is considered as attributable to military service. His disability at the rate of 15-19% is to be rounded off to fifty per cent for

life in view of the Government of India, Ministry of Defence letter No. 1(2)/97/D(Pen-C) dated 31st January, 2001 and the judicial pronouncement of

the Hon'ble Supreme Court in the case of Union of India Vs. Dr. B.R. Menon (Civil Appeal No. 418/2012). However, his arrears of disability element will

be limited to three years before filing of this OA. The date of filing of this OA is 24th April, 2018.

11. The respondents are directed to calculate, sanction and issue necessary PPO to the applicant within four months from the date of receipt of this

order, failing which, applicant shall be entitled to interest at the rate of eight per cent per annum till the date of actual payment.

12. No order as to costs.

Pronounced in open Court on this 16th day of September, 2019.